

**Letter from the Honorable Thomas M. Davis III, Frank M. Conner III,
and Todd A. Stottlemeyer**

August 9, 2012

Mr. Michael A. Curto
Chairman
Metropolitan Washington Airports Authority
1 Aviation Circle, Suite 210
Washington, D.C. 20001-6000

Dear Michael:

“This news is outrageous.” This quote is from U.S. Transportation Secretary Ray LaHood and appeared in the *Washington Examiner* on August 2, 2012, when Secretary LaHood learned that several former MWAA directors and employees had received six figure contracts after departing MWAA.

In a letter to you on July 31, 2012, Secretary LaHood said:

“I am appointing an Accountability Officer [to MWAA] to ensure that the concerns raised in the Inspector General's draft report are addressed and that the interests of the United States Government are protected. The need for this appointment is made all the more urgent following yesterday's Washington Examiner article on former board members leveraging their experiences for personal gain (see enclosed). The Accountability Officer will report directly to me and help ensure that the Authority's policies and practices meet the highest standards of ethics and fiscal responsibility and will put an end to any preferential treatment-real or perceived--shown to insiders.”

The Inspector General's draft report drew particular attention to the MWAA board acting in a more transparent manner. Specifically, the Inspector General's draft report said that, “gaps in transparency remain.” The report went on to add: “There remains a risk that public visibility into MWAA's business could be impeded through an inappropriate use of closed sessions.” Unfortunately, in our view, the MWAA board has only regressed since receiving the Inspector General's draft report in May.

As a result of the most recent news reports, Secretary LaHood's letter, and a number of recent actions that have been taken by the MWAA board related to recent litigation initiated by Mr. Dennis Martire, we are calling on you to take immediate action to address the concerns raised in the Inspector General's draft report as well as a number of other specific concerns arising from recent actions (or inactions)

taken by the MWAA board.

Formal Written Response to the Federal Inspector General's Draft Report

We have previously called on you to have the MWAA board formally respond in writing to the numerous deficiencies that were identified by the Inspector General related to procurement policies, expenditures of MWAA funds by directors, transparency and sunshine in all MWAA board activities, financial disclosure to avoid conflicts of interest, board travel policies, ethics training, and other deficiencies. To date, there has been no written response by the MWAA board. In fact, a key deficiency identified by the Federal Inspector General relates to the board's travel policies and use of MWAA monies. It is now almost three months since the Federal Inspector General issued his draft report, and yet there has been no formal discussion or action taken by the MWAA board to address the specific concerns and deficiencies that were raised. A draft has been circulated to directors, but there has been no full board discussion and no public forum to discuss the proposed changes. Since the public ultimately pays for any MWAA board travel through fees assigned to consumer travelers or the airlines, which are then passed on to consumers, the public has a right to hear from the MWAA board on how we intend to spend their money. **We call on you to have a full and open airing of the proposed travel policy changes at the board's next regularly scheduled meeting in September and to schedule a public vote at this meeting to approve a revised board travel policy that fully addresses the concerns and deficiencies raised by the Federal Inspector General.**

Conflicts of Interest and Preferential Treatment Shown to Insiders

In Secretary LaHood's letter to you on July 31, 2012, Secretary LaHood said that the Authority must put an end to preferential treatment - real or perceived - shown to insiders. The *Washington Examiner's* recent reporting shows that there are numerous instances that present at least the appearance of a conflict of interest in relation to former MWAA board members and employees potentially being shown preferential treatment upon leaving the Authority in receiving very large contracts. **We call on you and the MWAA board to develop a much more stringent conflict of interest policy and a revolving door policy similar to what is in place with the Federal Government that will prevent MWAA insiders from leaving the Authority and then turning around and being awarded lucrative contracts.**

Litigation by Mr. Dennis Martire

In June Virginia Governor Robert McDonnell stated that he had removed MWAA Director Dennis Martire for cause. Subsequently, Mr. Martire initiated litigation to contest the process and the grounds for his removal.

When the litigation was initiated by Mr. Martire, it raised the question of whether or not the MWAA board is required to indemnify Mr. Martire and pay for all of his legal costs in initiating the litigation to contest his removal. We have a number of serious

concerns with how this litigation has proceeded (including a 180 degree change in the MWAA legal position without authorization from the MWAA board to do so) and the specific actions or inactions of the MWAA board, such actions or inactions which may result in hundreds of thousands or even millions of dollars in legal fees being paid by MWAA. Our specific concerns are the following:

1. Despite repeated requests to take a recorded board vote as to whether or not Mr. Martire should be fully indemnified for his legal costs, no such vote has been taken. **We call on you to schedule a special meeting of the MWAA board at the earliest possible time to take a recorded board vote as to whether or not Mr. Martire is entitled to indemnification by the MWAA board. Regardless of a director's personal views, it is best practices and good governance for a board to fully consider the issues associated with indemnification and then take a recorded board vote on the issue, either affirming or denying the indemnification and stating the reasons for its decision.**

2. Despite repeated requests to have the MWAA board fully discuss the issues associated with Mr. Martire's MWAA board travel and more specifically his MWAA board travel to Sardinia, Italy for a European conference on small regional airports, no formal MWAA board discussion has ever taken place. The appropriateness of MWAA board travel was highlighted extensively in the Federal Inspector General's draft report. *Washington Post* editorials said Mr. Martire's "travel constitutes a particularly glaring abuse," that the forum Mr. Martire attended was "irrelevant to U.S. airport executives," and that Mr. Martire "used the airports authority's funds to indulge a fondness for junkets." Notwithstanding the findings in the Federal Inspector General's draft report and the extensive media coverage about the travels of MWAA board members, including Mr. Martire, the MWAA board has never had any type of formal meeting to discuss the actions of its directors. Your silence on this matter has been and continues to be deafening. **Again, we call on you to schedule a special meeting of the MWAA board at the earliest possible time to fully discuss these issues, which also relate to the issue of director indemnification.**

3. Since initiating litigation against the Commonwealth of Virginia, Mr. Martire, through his legal counsel, has now formally questioned the legitimacy of the appointment of another MWAA director (Director Stottlemeyer) and has issued far ranging subpoenas to three MWAA directors (Davis, Conner, and Stottlemeyer), the spouse of a MWAA director, Elaine McConnell and Lyn Chapman, Governor McDonnell's two recent appointments to the MWAA board, Virginia Secretary of Transportation Sean Connaughton, Congressman Frank Wolf, Congressman Wolf's Chief of Staff Dan Scandling, and possibly others that we are not aware of at this point. Indemnification of a director has always been intended to be a shield, to shield a director from any monetary damages for legitimate actions taken by a director. Mr. Martire is now using his indemnification as a sword, racking up legal costs likely already in the hundreds of thousands of dollars and likely to go much much higher. MWAA is currently paying the bill for all of this. We are in essence

funding our own destruction.

What is particularly appalling about the subpoenas that Mr. Martire has had issued is their scope. It is Mr. Martire's view that any communication about MWAA, even if it is completely unrelated to the issue of Mr. Martire's removal, between Directors Davis, Conner, and Stottlemeyer and a long list of public officials (including U.S. Secretary of Transportation LaHood, Governor McDonnell and any member of his administration including Virginia Secretary of Transportation Connaughton, the U.S. Department of Transportation Inspector General, the recently appointed U.S. Department of Transportation Federal Accountability Officer, any member of the Virginia General Assembly and their staffs, and others) is now subject to disclosure to Mr. Martire and his counsel. The subpoena states that this is an ongoing requirement. As Secretary LaHood said recently on another MWAA matter, we believe this is outrageous. Directors Davis, Conner, and Stottlemeyer were appointed by two Virginia governors, Governor Kaine and Governor McDonnell, to represent the Commonwealth of Virginia on the MWAA board. It is our duty to communicate often and fully with our Virginia elected officials on MWAA issues impacting Virginia, including those related to the MWAA board's integrity and questionable actions.

We call on you to:

- a. Account for and publicly disclose how much has been spent to date on legal fees (MWAA, Mr. Martire, others) related to this litigation.**
- b. Notify Mr. Martire and his legal counsel that MWAA is capping how much it will pay for Mr. Martire's legal fees, subject to a recorded board vote on whether or not Mr. Martire should be indemnified for his actions.**
- c. Join with counsel for Directors Davis, Conner, and Stottlemeyer in seeking to limit the scope of the subpoenas only to issues associated with the reasons for Mr. Martire's removal from the MWAA board. Otherwise, the appropriate speech of three directors with a wide range of Virginia and Federal public officials (numbering in the hundreds) will be inappropriately chilled.**

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In response to the subpoenas from Mr. Martire, we will likely provide thousands of pages of information to Mr. Martire and his legal counsel (actually two separate law firms now). The documentation will show the following:

1. We (Directors Davis, Conner, and Stottlemeyer) strongly supported efforts and worked hard to make the Project Labor Agreement on Phase 2 of the Dulles Rail Project a voluntary arrangement, exactly as it was on Phase 1 of the Dulles Rail Project. This was in no way a partisan issue. In fact, we were joined by the Democratic Chair of the Fairfax County Board of Supervisors Sharon Bulova, former

Virginia Democratic Governors Chuck Robb and Jerry Baliles, and many others (including MWAA's first Board Chairman, former Virginia Governor Linwood Holton and former U.S. Senator John Warner) in calling for a voluntary PLA on Phase 2 of the Dulles Rail Project. Ultimately, the MWAA board, at the very last possible moment, voted for a voluntary PLA arrangement for Phase 2. Our support for this result was predicated on getting the full financial participation of the Commonwealth of Virginia and Loudoun County for Phase 2 of the Dulles Rail Project. As the MWAA board is fully aware, without Loudoun County's affirmative 5-4 vote to opt in to Phase 2, Phase 2 of the Dulles Rail Project would have faced likely delays by as much as two years, thereby severely limiting MWAA's ability to secure historically favorable financing and move forward at a time of lower construction costs due to the slow economy and favorable labor conditions.

2. We were and continue to be deeply concerned by the findings of the Federal Inspector General's draft report and the lack of a robust and formal written response from the MWAA board. Given the overall lack of action on the MWAA board's part, we have been and will continue to press very hard for the changes recommended by the Federal Inspector General and outlined in this letter.

3. We are very concerned with the questions and issues raised by the Federal Inspector General and the characterizations in two *Washington Post* editorials questioning the legitimacy and appropriateness of travel by directors, including Mr. Martire's travel to Sardinia, Italy for a European small regional airport conference. We have yet to see any legitimate connection ("...the Board shall attend and participate in airport related activities that enhance its mission, **austerity** [emphasis added], and oversight role.") between the operations of Washington Dulles Airport and Washington National Airport related to the subject matter of the conference Mr. Martire attended in Sardinia, Italy.

4. We have communicated often with and will continue to communicate frequently with the Governor of Virginia and his cabinet, members of the Virginia General Assembly and their staffs, and our elected Members of Congress and their staffs regarding issues before the MWAA board that are important and relevant to the Commonwealth of Virginia. We were appointed to represent the Commonwealth of Virginia on the MWAA board and in fact took an oath to uphold the Constitution of the Commonwealth of Virginia. Our state's interests in matters that come before the MWAA board are significantly greater than for those who were appointed by the Governor of Maryland, the District of Columbia City Council, or the President of the United States. Yes, Washington Dulles and Washington National Airports serve the entire Washington, DC region (Of course, Maryland has its own airport, BWI, which is not within the purview of MWAA). But today's MWAA is now responsible for much more than two airports. MWAA controls the Dulles Toll Road and is responsible for building rail to Dulles Airport and into Loudoun County. The federal government is only paying roughly 16% of the cost of the entire Dulles Rail Project. The other 84% is coming principally from Virginians (the Commonwealth of Virginia, Fairfax County, Loudoun County, and commuters, mostly all Virginians,

who use the Dulles Toll Road). The Dulles Corridor (Tysons to Dulles to Leesburg) is clearly the most important economic corridor for Northern Virginia and the Commonwealth of Virginia. It is Virginia's Main Street. Imagine if a board composed of a majority of non-Marylanders had the authority to decide all transportation matters, including setting tolls, in the Maryland I-270 corridor? That is the situation that exists today with respect to the Dulles Toll Road. For this reason, we intend to support further changes to the MWAA board to appropriately, in light of the equity interests involved, give Virginia a clear majority on the MWAA board.

5. We have deep respect and admiration for MWAA CEO Jack Potter and the hardworking men and women who work for MWAA and come to work every day to ensure safe and efficient air operations and the safe and timely construction of the Dulles Rail Project. We appreciate all that they do on behalf of MWAA and truly regret that the actions of the MWAA board have put the entire Authority in such a poor light.

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The board's unwillingness to address these issues may well lead to the end of MWAA as we currently know it. It certainly will hinder our ability to effectively complete the many significant initiatives for which we are responsible. We currently spend very little time on the real business of the Authority and all of our time on a variety of issues that are unrelated to our mission. Equally importantly, we have little or no moral authority or credibility in managing the Dulles Rail Project as a board or in establishing toll rates for those who will be using the Dulles Toll Road despite the fact that our staff is performing at a very high level in managing the project. We need to proactively and aggressively deal with these issues to regain the credibility that is necessary for us to continue as a significant contributor to the economic development of this region.

Sincerely,

Thomas M. Davis III
Frank M. Conner III
Todd A. Stottlemeyer